



October 18, 2016

Notice of Ex Parte

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106; *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143.

Dear Ms. Dortch,

On Friday, October 14, 2016, Berin Szóka (TechFreedom) and Tom Struble (TechFreedom) met first with David Grossman (Office of Commissioner Clyburn) and then Claude Aiken (Office of Commissioner Clyburn) to discuss various issues regarding broadband deployment, as well as the FCC's ongoing proceedings regarding broadband privacy and business data services.

Regarding broadband deployment, Messrs. Szóka and Struble applauded the work Commissioner Clyburn has done throughout her recent Connecting Communities Tour. While some broadband deployment initiatives will need to come from Congress, there are a number of ways that the FCC, in addition to State and local governments, can help promote broadband deployment on their own. In particular, Messrs. Szóka and Struble championed the idea put forward recently by Commissioner Pai¹ (and in joint comments from TechFreedom and the International Center for Law & Economics in 2015²) of the FCC reviving its Broadband Deployment Advisory Committee, and using that forum to take input from key stakeholders — including industry groups, State Public Utility Commissioners, and Federal policymakers — and develop form contracts, model agreements, and deployment strategies that can be utilized at the State and local level to promote broadband deployment across the board.

¹ Remarks of Ajit Pai, Comm'r, FCC, *A Digital Empowerment Agenda*, at 8 (Sept. 13, 2016), available at <https://goo.gl/FGbQmN>.

² Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act; *Reply Comments of TechFreedom and the International Center for Law & Economics*, GN Docket No. 14-126 (Apr. 6, 2015), available at <https://goo.gl/3uVhYQ>.

Regarding broadband privacy, Messrs. Szóka and Struble relayed some of their concerns about privacy regulation, and offered suggestions for how the FCC should take on its privacy and consumer protection duties going forward. After detailing observed shortcomings in recent privacy and consumer protection work done by the Federal Trade Commission — including a lack of clearly developed privacy standards and a tendency to settle all or almost all complaints before the agency, removing the check of judicial oversight on the FTC’s discretion — Messrs. Szóka and Struble implored the FCC to learn from the FTC’s shortcomings. In particular, to avoid the problems caused by unconstrained regulatory discretion, Messrs. Szóka and Struble suggested the FCC follow the FTC’s substantive approach, by issuing policy statements or interpretive rules to provide more guidance as to the FCC’s various authorities under the Communications Act (including Sections 201, 202, 222, and 631), similar to how the FTC has done for its authorities under Section 5 of the FTC Act, but to marry that substantive approach with enforcement standards and procedural guidelines that will produce more adjudications on the merits and, thus, a more robust privacy framework that evolves over time.

Finally, regarding business data services, Messrs. Szóka and Struble questioned some of the analysis and judgment undergirding the proceeding. In discussing the merits of the proposal, Messrs. Szóka and Struble tried to parse some of the distinctions surrounding the questions of market definition and competition analysis, and stressed the importance of considering threats of competitive entry when assessing the state of competition in a market, however defined. For newer Ethernet and IP-based business data services, Messrs. Szóka and Struble commended the FCC for proposing to take a light-touch approach that does not rely on ex ante price regulation, for that would likely stifle future investment and entry into this market, which is already important and will become increasingly more so going forward, particularly with the dramatic rise in backhaul needs that will accompany the forthcoming 5G revolution. In concluding, Messrs. Szóka and Struble once again harkened back to the idea of reviving the Broadband Deployment Advisory Committee, and suggested that the issue of business data services would also benefit from increasing dialogue between industry stakeholders and policymakers at the Federal, State, and local levels.

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Pursuant to Section 1.1206 of the Commission’s rules, 47 C.F.R. § 1.1206, please include this letter in the above-referenced proceedings. Please direct any questions to the undersigned.

Sincerely,
/s/ Berin Szóka
President
TechFreedom